



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,499	01/04/2001	Joseph A. Bailey	5500-66800	7413

7590 01/13/2004

B. Noel Kivlin  
Conley, Rose & Tayon, P.C.  
P.O. Box 398  
Austin, TX 78767-0398

EXAMINER

CLEARY, THOMAS J

ART UNIT	PAPER NUMBER
----------	--------------

2111

DATE MAILED: 01/13/2004

7

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/755,499

Applicant(s)

BAILEY, JOSEPH A.

Examiner

Thomas J. Cleary

Art Unit

2111

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☒ The drawing correction filed on 16 December 2003 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

***Response to Arguments***

1. Applicant has argued that "the teachings of Ruszczyk do not appear to be relevant to the invention as recited in Claim 1" (See Page 5, 1<sup>st</sup> Full Paragraph).

However, the devices of both Ruszczyk and The Applicant are directed towards means for transmitting packets in a network environment. Thus, the teachings of Ruszczyk are relevant to the invention as recited in Claim 1.

2. Applicant has argued that there is "no relevance of the teaching of Lu to the Applicant's invention" (See Page 6, 1<sup>st</sup> Full Paragraph).

However, the devices of both Lu and The Applicant are directed towards methods and apparatus for communications networks. Thus, the teachings of Lu are relevant to the invention as recited in Claim 1.

3. Applicant has argued that "The Examiner is asserting that assigning priorities to signals based upon the source of the signal is analogous to storing packets in buffers based on an identifier indicative of the source of the packet" (See Page 5, 4<sup>th</sup> Full Paragraph).

However, as shown in the Office Action of 23 October 2003, The Examiner is asserting that storing packets in a plurality of queues based on the priority of the packet, as taught by Ruszczyk, wherein the priorities are assigned based on the source of the

signal, as taught by Lu, are analogous to storing packets in buffers based on an identifier indicative of the source of the packet, when taken in combination.

4. Applicant does not appear to be arguing the combination of the references taken as a whole, but rather appears to be arguing that neither Ruszczyk, Lu, Huang, Cidon, or Drottar teach The Applicant's invention, as recited in Claim 1 (See Pages 4-7).

One cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references. The test for combining references is not what the individual references themselves suggest but rather what the combination of the disclosures taken as a whole would suggest to one of ordinary skill in the art.

5. Applicant has argued that "neither Ruszczyk, Lu, nor Huang, taken singly or in combination, teach or suggest the combination of features as recited in The Applicant's Claim 1" and that "Claim 1, along with its dependent claims, patentably distinguishes over Ruszczyk in view of Lu and Huang, Ruszczyk and Lu in view of Cidon, and over Ruszczyk and Lu in view of Cidon and in further view of Drottar" (See Page 7, 4<sup>th</sup> Full Paragraph).

However, as shown above and in the Office Action of 23 October 2003, the rejections of Claim 1 along with its dependent claims under 35 USC §103 teaches all the limitations taught in Claim 1 and its dependent claims.

6. Applicant has argued that "Claims 9 and 17 recite features similar to Claim 1" and "Claims 9 and 17, along with their dependent claims, patentably distinguish over Ruszczyk in view of Lu and Huang, Ruszczyk and Lu in view of Cidon, and over Ruszczyk and Lu in view of Cidon and in further view of Drottar for at least the reasons given above" (See Page 7, 5<sup>th</sup> Full Paragraph and Page 8, 1<sup>st</sup> Paragraph).

However, as shown above, the rejections of Claim 1 along with its dependent claims under 35 USC §103 teaches all the limitations taught in Claim 1 and its dependent claims. Therefore, as shown in the Office Action of 23 October 2003, the rejections of Claims 9 and 17 along with their dependent claims under 35 USC §103 teaches all the limitations taught in Claims 9 and 17 and their dependent claims.

### ***Conclusion***

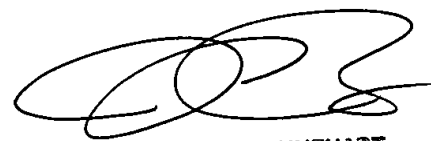
7. Thus, in conclusion, the rejection of the claims is properly supported by the references as applied and Applicant's arguments towards patentability have been fully considered, but are not considered persuasive by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Cleary whose telephone number is 703-305-5824. The examiner can normally be reached on Monday-Thursday (8-5:30), Alt. Fridays (8-4:30).

Art Unit: 2111


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark H. Rinehart can be reached on 703-305-4815. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5631.



MARK H. RINEHART  
SUPERVISOR, PATENT EXAMINER  
TECHNOLOGY CENTER 2100

tjc



Thomas J. Cleary  
Patent Examiner  
Art Unit 2111